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*Attorneys for Defendant
Executive Risk Specialty Insurance Company*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LENSCRAFTERS, INC., and EYEXAM OF
CALIFORNIA, INC.,

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK SPECIALTY
INSURANCE COMPANY; UNITED STATES
FIRE INSURANCE COMPANY; MARKEL
AMERICAN INSURANCE COMPANY and
WESTCHESTER FIRE INSURANCE
COMPANY,

Defendants.

AND RELATED CROSS ACTIONS

No. C07-02853 SBA

[Related Case No. C 04-01001 SBA]

**STIPULATION AND ~~PROPOSED~~
ORDER DISMISSING CERTAIN
COUNTERCLAIMS AND CROSS-
CLAIMS *WITHOUT PREJUDICE***

Pursuant to Fed. R. Civ. P. 41(a), the parties to this action hereby stipulate as set forth below.

WHEREAS, on September 4, 2007, defendant/cross-claimant Executive Risk Specialty Insurance Company ("ERSIC") filed a Counterclaim against Plaintiff/Counter-Defendants LensCrafters, Inc. and EYEXAM of California, Inc. (collectively "LensCrafters") and a Cross-Complaint against Liberty Mutual Fire Insurance Company ("Liberty"), United States Fire

Insurance Company ("U.S. Fire"), Markel American Insurance Company ("Markel") and Westchester Fire Insurance Company ("Westchester") in this matter;

WHEREAS, ERSIC previously dismissed its Counterclaim against LensCrafters and its Cross-Complaint as against Liberty and Westchester;

WHEREAS, on July 31, 2008, defendant and counter-claimant U.S. Fire filed an Answer and Counterclaim in response to ERSIC's Cross-Complaint.

WHEREAS, ERSIC and U.S. Fire have agreed to dismiss their respective claims against each other without prejudice, pursuant to a tolling agreement, in order to avoid potentially unnecessary litigation costs;

NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to the present action, through their attorneys of record, that

(1) ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *without prejudice* as to U.S. Fire, and

(2) U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED *without prejudice* as to ERSIC.

DATED: November 20, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

By 

Darren Teshima
Attorneys for Plaintiffs
LENSCRAFTERS, INC. and EYEXAM OF CALIFORNIA, INC.

DATED: November __, 2008

ROSS, DIXON & BELL, LLP

By _____

Terrence R. McInnis
Attorneys for Defendant
EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

Insurance Company ("U.S. Fire"), Markel American Insurance Company ("Markel") and Westchester Fire Insurance Company ("Westchester") in this matter;

WHEREAS, ERSIC previously dismissed its Counterclaim against LensCrafters and its Cross-Complaint as against Liberty and Westchester;

WHEREAS, on July 31, 2008, defendant and counter-claimant U.S. Fire filed an Answer and Counterclaim in response to ERSIC's Cross-Complaint.

WHEREAS, ERSIC and U.S. Fire have agreed to dismiss their respective claims against each other without prejudice, pursuant to a tolling agreement, in order to avoid potentially unnecessary litigation costs;

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(2) U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED *without prejudice* as to ERSIC.

DATED: November __, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

By

Darren Teshima

Attorneys for Plaintiffs

LENSCRAFTERS, INC. and EYEXAM OF CALIFORNIA, INC.

DATED: December 11, 2008

ROSS, DIXON & BELL, LLP

By /s/ Terrence R. McInnis

Terrence R. McInnis

Attorneys for Defendant

EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

1 DATED: December 11, 2008 LONG & LEVIT LLP

2
3 By /s/ Chip Cox
4 Chip Cox
5 Attorneys for Defendant
6 MARKEL AMERICAN INSURANCE COMPANY

7 DATED: December 11, 2008 SQUIRE SANDERS & DEMPSEY L.L.P.

8
9 By /s/ Amy Rose
10 Amy E. Rose
11 Attorneys for Defendant
12 UNITED STATES FIRE INSURANCE COMPANY

13 **ORDER**

14 Good cause appearing, IT IS HEREBY ORDERED that:

- 15 1. ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *without*
16 *prejudice* as to U.S. Fire, and
17 2. U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be
18 DISMISSED *without prejudice* as to ERSIC.

19 DATED: 1/9/09

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21 UNITED STATES DISTRICT JUDGE
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